

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPHINE DRAKEFORD,

Plaintiff,

v.

Docket No.: 07-CV-3490 (RMB)(DFE)

KEVIN ROLLINS and DELL, INC.

Defendants.

**DECLARATION OF BRYAN F. LEWIS IN SUPPORT OF MOTION TO DISMISS
THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)**

BRYAN F. LEWIS declares, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am associated with Nixon Peabody LLP, attorneys for Defendants Kevin Rollins and Dell Inc. (collectively “Dell”) in this matter. I am a member in good standing of the bar of the State of New York and the bar of this Court.
2. I have reviewed the Complaint in this case and information provided to me by our clients, and as such am familiar with the facts and circumstances relevant to the matters at issue. This Declaration, the exhibits attached hereto, the Affidavit of Ange Kogutz (“Kogutz Aff.”), and the accompanying Memorandum of Law are submitted in support of Dell’s motion to dismiss plaintiff Josephine Drakeford’s (“Plaintiff”) Complaint in this action.
3. The Complaint was filed with this Court on May 2, 2007 and was served on Dell on or about July 20, 2007. A copy is attached hereto as **Exhibit A**.
4. On August 9, 2007, pursuant to Section 2(A) of Judge Berman’s Individual Practices, Defendants requested that the Court schedule a pre-motion conference to discuss

Dell's anticipated motion to dismiss the Complaint under F.R.C.P. 12(b)(1), 12(b)(6), and 12(h)(3). Leave to file the instant motion was granted at that time.

5. The principal basis for this motion is that this Court lacks jurisdiction over the subject matter of this litigation because there is no federal question presented and the amount in controversy falls far short of the jurisdictional threshold. Alternatively, several of Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim.

6. As discussed more fully in the accompanying Memorandum of Law, the instant Complaint alleges nothing more than a putative breach of contract claim grounded exclusively in state law.

7. This Court should be aware that this is Ms. Drakeford's second attempt to commence a federal action against Dell Inc. and Mr. Rollins, the first having been dismissed by Judge Kimba M. Wood on December 13, 2006 for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3) and 28 U.S.C. 1915(e)(2). See Josephine Drakeford v. Dell , Inc., Civil Action No. 06 CV 14396 (KMW)(KNF). A copy of the Complaint in that first action, which reveals claims that are virtually identical to those set forth in the instant pleading, and a copy of Judge Wood's Order of Dismissal, are attached hereto as **Exhibit B** and **Exhibit C**, respectively.

8. The only notable differences between this Complaint and the one that was dismissed by Judge Wood is the ad damnum: Ms. Drakeford has revised her damages claim upwards from \$60,000.00 to an unsupportable \$347,000.00, all for the same alleged conduct. Ms. Drakeford should not be permitted to circumvent Judge Wood's ruling with a baseless and nonsensical damages claim.

9. This is by no means Ms. Drakeford's first attempt to bring an action in this Court. Ms. Drakeford has had actions dismissed by this Court on grounds similar to those noted herein, and she has an extensive history of litigation in this District and the New York State Courts, as well as an appellate history that extends to the U.S. Supreme Court and the New York Court of Appeals. In addition to the instant action and the previous action dismissed by Judge Wood in December 2006, Ms. Drakeford currently has pending actions before Judge Daniels (No. 07-cv-3489, *pending*) and Judge Sand (No. 07-cv-3488, *pending motion to dismiss*). Further, Ms. Drakeford has recently litigated cases before Judge Hellerstein (No. 05-cv-4070, *closed 2005*), Judge Chin (00-cv-9159, *dismissed for lack of subject matter jurisdiction in 2001*), and twice before Judge Mukasey (No. 03-cv-2915, *dismissed per F.R.C.P. 12(b)(1), (h)(3), and 28 U.S.C. 1915(e)(2)*, and 05-cv-7366, *dismissed per 28 U.S.C. 1915(e)(2) for lack of arguable basis in law or fact*). Notably Judges Mukasey (twice) and Wood have each certified pursuant to 28 U.S.C. 1915(a)(3) than any appeal from their respective orders would not be taken in good faith, though Ms. Drakeford nonetheless appealed at least one of Judge Mukasey's orders (*see Drakeford v. Federal Bureau of Investigation, 126 S. Ct. 2304 (2006), cert. denied*).

10. For the reasons set forth herein, in the Affidavit of Ange Kogutz, and in the accompanying Memorandum of Law, Dell respectfully requests that this action be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(1), (b)(6), (h)(3), and 28 U.S.C. 1915(e)(2)(B).

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